

JUN 13 2008

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ella, *et al.*

Application No.: 10/585,030

: Attorney Docket No.: 06-40104-US

Filing Date: June 29, 2006

For: A PROCESS FOR THE PREPARATION AND PURIFICATION OF RECOMBINANT  
PROTEINSCommissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**RESPONSE TO ELECTION REQUIREMENT**

This paper is being filed in response to the Office Action dated January 15, 2008 (Paper No./Mail Date 20080108) (herein referred to as "the Office Action" or "this Office Action") from the Patent Office. In the Office Action, the Examiner has imposed a requirement to elect a single species (as set forth on page 2 of the Office Action) for further examination of the above application.

Applicant hereby provisionally elects with traverse to further prosecute species set forth below:

- A. Yeast as stated in claim 2.
- B. Hydrophobic chromatography as stated in claim 3 (h).
- C. Viral antigen as stated in claims 4 and 6.
- D. No "detergent" limitation in claim 3 (d) and claim 11.
- E. Viral antigens as stated in claim 16.

In the Office Action, the Examiner avers that "the species lack the same or corresponding special technical features . . . Therefore, the claimed species are physically, chemically and functionally distinct." The Examiner provides a mere statement of conclusion. An unsupported allegation by the Examiner is not believed sufficient to support the required restriction. The Examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the Examiner if the species election is not required. The Examiner must show that that there would be serious search burden as evidenced by separate classification, status or field of search. In addition, the subject matter of the pending claims is sufficiently

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related so that a thorough search for the subject matter of one species would necessarily encompass a search for the other species in the group. Thus, there is no reason for insisting on the election of species and no undue burden on the Examiner.

Further, for example, claims 2, 3, 4, 6, 11 and 16 recite only a reasonable number of species. Thus, Applicant submits that all the claims and the claimed species can be searched and examined without any serious burden to the Examiner.

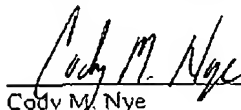
It is further submitted that in view of the fees charged for filing of divisional patent applications, and prosecution and maintaining the resulting patents place an undue burden on the Applicant, which justifies that any election requirement be clearly supported and made according to the patent examining procedure.

Based upon the above remarks, Applicant respectfully requests reconsideration of this election requirement and early allowance of the pending claims. Should the Examiner feel that a telephone conference with Applicant's attorney would expedite prosecution of this application, the Examiner is urged to contact the undersigned attorney.

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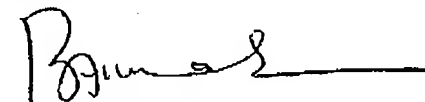
This Response is timely filed with Petition for Four-Month Extension of Time filed concurrently herewith. Should a Petition for additional Extension of Time be required, please consider this paper as a request for such a Petition. The Commissioner is hereby authorized to charge any fees, which may be required by this paper, to Deposit Account No. 18-0586.

I hereby certify that this paper and the papers referred to herein as being transmitted, submitted, or enclosed herewith in connection with U.S. Serial No. 10/585,030 is/are being facsimile transmitted to the United States Patent and Trademark Office fax number 571 273 8300 on the date shown below.

  
Cody M. Nye

Date of Facsimile Transmission: June 13, 2008

Respectfully submitted,



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